

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

**CHRISTINE COSTELLO,
WILLIAM MALLON,
HEATHER SNOOK,
JANICE ZELLERINO,
KENNETH ABBOTT, *for themselves and
on behalf of all others similarly situated,***

Plaintiffs,

v.

Civil No. 3:13CV268-HEH

XCELERATED INVESTMENTS, INC.

Defendant.

STATUS REPORT

This matter is currently pending before the Court on Plaintiffs' Class Action Complaint against Xcelerated Investments, Inc. The case was filed on April 26, 2013 (Doc. 1) and the Summons and Complaint were properly served upon the Defendant on May 20, 2013. (Doc. 3.) The Defendant has failed to Answer the Complaint. On July 2, 2013, the Clerk filed a notice to the Plaintiffs that no Answer had timely been filed and that the Plaintiff should takes steps to proceed with the case. (Doc. 4.)

Generally, in the case of a default by a defendant, a plaintiff may move for entry of default and default judgment. Under Federal rule 8(b), all allegations (other than damages) alleged in the Complaint are deemed admitted where no responsive pleading was timely filed. *EMI April Music, Inc., v. White*, 618 F.Supp.2d 497, 505 (E.D.Va. 2009). However, even though the facts alleged in the Class Complaint are established by the Defendant's default, because it is a putative class action, the prerequisite for class recovery is class certification. *Partington v. Am. Inters. Specialty Lines Ins. Co. Inc.*, 443 F.3d 334 (4th Cir.

2006).

In order to certify the class, the Plaintiff must fulfill the rigor of Fed. R. Civ. P. 23, which factors can be established in part by circumstantial and publicly available evidence. *Gen'l Tel. of the S.W. v. Falcon*, 457 U.S. 147, 155 (1982). The unusual posture of the case, occasioned by the failure of a properly-served Defendant to file an Answer, should not operate to reward such a Defendant for failure to enter an appearance in the case. Even though the allegations in the Class Complaint are established, the Plaintiff must nonetheless demonstrate to the court the elements of Rule 23 are satisfied, which, on its face, the Class Complaint cannot establish the numerosity element but which element can be established through circumstantial evidence. Therefore, having studied the relevant case law and the applicable Federal Rules, the Plaintiff intends to proceed as follows:

- (1) Move for entry of default not later than August 9, 2013;
- (2) Move for class certification not later than September 4, 2013;
- (3) Move for default judgment upon the Court's certification of the class.

For the reasons explained in this status report, the Plaintiffs respectfully requests the court's approval of the proposed course of action.

Respectfully,

CHRISTINE COSTELLO,
WILLIAM MALLON,
HEATHER SNOOK,
JANICE ZELLERINO,
KENNETH ABBOTT, *for themselves and on
behalf of all others similarly situated,*

_____/s/
Leonard A. Bennett VSB#37523
Susan M. Rotkis VSB#40693

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CERTIFICATE OF SERVICE

I certify that this 1st day of August, 2013, I have filed the foregoing pleading using the Court's ECF system, which will send a notice of electronic filing (NEF) to the parties who have entered an appearance herein. For the unrepresented Defendant, the I have sent a copy of this pleading, U.S. Postage Prepaid, to the Defendant's Registered Agent:

Xcelerated Investments, Inc.
Business Filings Incorporated, Registered Agent
4701 Cox Road, #301
Glen Allen, Virginia 23060-6802

/s/
Susan M. Rotkis VSB#40693
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